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S.B. CIVIL MISC. APPEAL NO.790/2006.
(R.S.R.T.C. Vs. Umaram & Ors.)

Date of Order :: 18.09.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Anil Bachhawat, for the appellant.

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After examining the record of the case and hearing the learned counsel for the appellant, this Court passed the following order on 08.09.2006:

> "After hearing learned counsel for the appellant and after examining the record, this Court expressed prima facie opinion that the ultimate award dated 19.01.2006 made by the Motor Accidents Claims Tribunal, Bali in this case remains that of just compensation in relation to the death of Mst. Nenu, 12 years in age, for injuries to Mst. Tulsi, claimant No.2 and for injuries to Puran, claimant No.3; even the finding on the responsibility of the bus driver towards accident seems to be based on proper appreciation of evidence available on record; and even if case be considered of composite negligence in view of head-on collision of bus of the appellant and the on-coming truck, yet qua the victims, who were occupants of the bus, the appellant would nevertheless remain liable and, therefore, the award calls for no interference.
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> Learned counsel submitted that another appeal arising from a different award dated 09.09.2004 made by Motor Accidents Claims Tribunal, Merta in Claim Case No.35/2003 has been preferred before this Court by the appellant-Rajasthan State Road Transport

Corporation and though the said award has been made by a different Tribunal in a different claim case but relates to the same accident and the said appeal has been admitted. Record of said appeal being CMA No.737/2005 was requisitioned and perusal thereof shows that the award therein was made in the sum of Rs.9,86,024/- for compensation in respect of death of one Shri Kishan, 36 years in age having a salary income of about Rs.7508/- per month.

This Court is prima facie of opinion that even if the said CMA No.737/2005 has been admitted and relates to the same accident but the fact remains that the award impugned therein has been made by a different Motor Accidents Claims Tribunal in a different claim case on the basis of evidence adduced therein. Therefore, the admission of said appeal cannot ipso facto inure to the benefit of the appellant in this case.

Moreover, having examined the entire record relating to present Claim Case No.120/2003 decided by the Motor Accidents Claims Tribunal, Bali on 19.01.2006, this Court is prima facie satisfied that neither the total award could be said to be highly excessive nor the finding on the responsibility of the bus driver towards the accident could be said to be perverse and the present appeal, therefore, does not merit admission.

After having examined the evidence as available on record relating to present case, learned counsel Mr.Bachhawat appearing for the appellant made a request that a week's time may be granted for him to seek instructions from the appellant whether the appellant would like to proceed with the present appeal or not?

Put up on 18.09.2006 as prayed."

Today, learned counsel Mr. Bachhawat for the appellant submits on instructions that apart from the Claim Case No.35/2003 that led to passing of the award by a different Claims Tribunal on 09.09.2004 that is subject to CMA No.737/2005, there are at least two more claim applications relating to the same accident pending before other Claims Tribunals.

However, learned counsel Mr. Bachhawat submits that so far the present appeal is concerned, the appellant does not want to proceed with it and seeks permission to withdraw the same subject of course of reserving of its rights to make appropriate submissions on merits in relation to other claim cases including the appeal pending before this Court.

As already noticed on 08.09.2006, so far the record of the present claim case is concerned, the findings recorded by the Tribunal does not appear to be perverse calling for any interference by this Court and the ultimate award made by the Tribunal, in all in the sum of Rs.2,43,000/- in relation to the death of Mst. Nenu, 12 years in age and in relation to the injuries sustained by Mst. Tulsi and Puran, does not appear to be excessive so as to warrant any interference in appeal.

However, in the totality of the circumstances, as noticed above, the prayer made on behalf of the appellant for withdrawing of this appeal without prejudice to its rights in relation to other claim cases seems reasonable and is, therefore, granted.

This appeal is, therefore, dismissed as withdrawn subject of course to the clarifications aforesaid. Let a copy of this order be placed on record of S.B. Civil Misc. Appeal No.737/2005.

(DINESH MAHESHWARI), J.

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